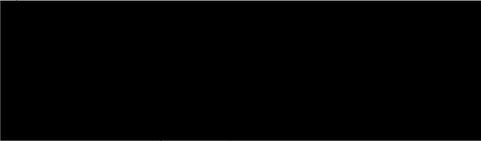




U.S. Citizenship
and Immigration
Services

identifying data [redacted]
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY



13

FILE: [redacted]

OFFICE: DENVER, CO

Date: **MAR 09 2006**

IN RE: APPLICANT: [redacted]

APPLICATION: Application for Replacement Naturalization/Citizenship Document under Section 338 of the Immigration and Nationality Act, 8 U.S.C. § 1149.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Greece and a naturalized citizen of the United States. He seeks to have his Certificate of Naturalization corrected pursuant to section 338 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1449, to reflect a change in his name and date of birth.

The district director reviewed the applicant's record and determined that the applicant's request was not justifiable. The application was denied accordingly.

On appeal, the applicant asserts that his given name is [REDACTED] and that his birth date is April 22, 1938. The applicant submits copies of his U.S. passport and a Greek certification of birth containing his April 22, 1938 birth date. The applicant asserts that his other identification documents reflect his correct name and birth date, and he requests that U.S. Citizenship and Immigration Services (CIS) correct the July 22, 1938 date of birth on his naturalization certificate. In addition, the applicant requests that the name on his naturalization certificate be changed from [REDACTED] to [REDACTED].

Section 338 of the Act provides the statutory authority relating to the contents of a Certificate of Naturalization. The specific regulations regarding the execution and issuance of Certificates of Naturalization are contained in 8 C.F.R. § 338.5, and provide, in pertinent part, that:

- (a) Whenever a Certificate of Naturalization has been delivered which does not conform to the facts shown on the application for naturalization, or a clerical error was made in preparing the certificate, an application for issuance of a corrected certificate, Form N-565, without fee, may be filed by the naturalized person.

- (e) The correction will not be deemed to be justified where the naturalized person later alleges that the name or date of birth which the applicant stated to be his or her correct name or date of birth at the time of naturalization was not in fact his or her own name or date of birth at the time of naturalization.

The applicant's immigrant visa and naturalization petition documents reflect that the applicant used the name [REDACTED] prior to his naturalization as a U.S. citizen. The record indicates, however, that in conjunction with his naturalization as a U.S. citizen, the applicant petitioned the U.S. District Court for a name change, and that the court granted the applicant a name change from [REDACTED] to [REDACTED]. The record contains no evidence to establish that the applicant has obtained a subsequent court order for a name change from [REDACTED] to [REDACTED]. Moreover, the record reflects that the applicant consistently stated that his birth date was July 22, 1938 for all U.S. immigrant visa and naturalization petition purposes.

Based on the evidence contained in the record, the applicant has not established that his Certificate of Naturalization contains Immigration and Naturalization Service (Service, now CIS) related clerical errors, and the AAO finds that that the information on the applicant's Certificate of Naturalization conforms to the facts

as set forth in his application for that document. Accordingly, the AAO finds that the provisions contained in 8 C.F.R. § 338.5 do not justify or allow for a CIS correction to the applicant's Certificate of Naturalization.

The AAO notes that because there are no clerical errors in the present matter, only a federal court with jurisdiction over the applicant's naturalization proceedings has the authority to order that an amendment be made to the applicant's Certificate of Naturalization, after a hearing in which the Government is provided an opportunity to present its position on the matter. Such a hearing ensues pursuant to a motion to the court for an Order Amending a Certificate of Naturalization. *See* 8 C.F.R. § 334.16(b). *See also, Chan v. Immigration and Naturalization Service*, 426 F. Supp. 680 (1976) and *Varghai v. Immigration and Naturalization Service*, 932 F. Supp. 1245 (1996).¹

Based on the reasoning set forth above, the appeal will be dismissed.²

ORDER: The appeal is dismissed.

¹ 8 C.F.R. §334.16(b) states in pertinent part:

[W]henever an application is made to the court to amend a petition for naturalization after final action thereon has been taken by the court, a copy of the application shall be served upon the district director having administrative jurisdiction over the territory in which the court is located, in the manner and within the time provided by the rules of court in which the application is made. No objection shall be made to the amendment of a petition for naturalization after the petitioner for naturalization has been admitted to citizenship if the motion or application is to correct a clerical error arising from oversight or omission. A representative of the Service [CIS] may appear at the hearing upon such application and be heard in favor of or in opposition thereto. When the court orders the petition amended, the clerk of court shall transmit a copy of the order to the district director for inclusion in the Service file.

² The appeal is dismissed without prejudice to the applicant's submitting a new application upon compliance with the regulations as set forth in 8 C.F.R. § 334.16.